

**NEIGHBORHOOD PLAN AMENDMENT REVIEW SHEET**

**NEIGHBORHOOD PLAN:** Central Austin Combined Neighborhood Plan

**CASE#:** NPA-2010-0019.02 (NPA-2010-0019.01 former case number)

**PC PUBLIC HEARING DATE:** September 28, 2010

**ADDRESS:** 209 E. 38<sup>th</sup> Street      **AREA:** 0.1795 acres

**APPLICANT/AGENT:** Vincent Gerard & Associates (Vincent G. Huebinger)

**OWNER:** Gil L. Liebrecht & Jason Mitchell

**TYPE OF AMENDMENT:**

**Change in Future Land Use Designation**

**From:** SINGLE FAMILY

**To:** MULTIFAMILY

**Base District Zoning Change**

**Related Zoning Case:** C14-2010-0024

**From:** SF-3-NCCD-NP

**To:** MF-1-CO-NCCD-NP

**PLAN ADOPTION DATE:** August 2004

**PLANNING COMMISSION RECOMMENDATION:** On September 28, 2010, the motion to approve staff's recommendation to deny the request for multifamily use; was approved by Commissioner Danette Chimenti's motion, Commissioner Sandra Kirk second the motion on a vote of 8-0-1; Commissioner Dave Anderson abstained.

**STAFF RECOMMENDATION:** Not recommended.

**BASIS FOR STAFF'S RECOMMENDATION:** The proposed plan amendment does not support the following plan amendment Goals, Objectives, and Recommendations:

***GOAL ONE***

***PRESERVE THE INTEGRITY AND CHARACTER OF THE SINGLE-FAMILY NEIGHBORHOODS***

**Objective 1.1:** Rezone property as needed to ensure that new development is compatible with the desired residential character of each neighborhood.

**Recommendation 1**      Rezone multi-family zoned properties with historically single-family uses to single-family zoning throughout the combined planning area where appropriate and in accordance with sound planning principles.

**Objective 1.4:** Limit new commercial and multi-family spread into the single-family core of the neighborhoods by establishing a perimeter of apartments, offices, and commercial uses.

**Recommendation 2** Preserve the commercial, office, and multi-family zoning surrounding the neighborhood and create a “hard edge” to prohibit incursions into the neighborhood.

### **North University Neighborhood**

*Like many of the neighborhoods adjacent to the University of Texas, the pressures associated with the need for student housing have affected the North University Neighborhood. Residents value the diversified pattern of residential land uses that have evolved over the last century in their neighborhood; however, protecting the existing single-family housing stock is a very high priority. Preserving the historic collection of houses is key to maintaining the character that attracts families, retirees, students, and single adults. The residents in the neighborhood recognize the need for off-campus student housing and accept students as an integral part of their neighborhood. They also express a strong desire to preserve the unique sense of place that attracted them to this charming and historic inner-city neighborhood.*

**Objective 1.9:** Preserve the integrity of the original residential development in the North University Neighborhood.

- Promote changes in land use and buildings and new construction that are in scale and compatible with the surrounding uses and structures.
- Ensure that new multi-family developments keep the prevailing scale, character, and streetscape elements of the area.
- Recognize that two-family development is a characteristic pattern of the neighborhood including garage apartments and small residences facing side streets.
- Prevent single-family houses from being constructed that result in dormitory-like structures with numerous cars.
- Preserve the pattern of front lawns by locating most parking at the rear of lots.
- Revise permitted land uses to allow only those uses that are compatible with existing adjacent residential uses as defined in each of the land-use districts.
- Establish sub-districts as needed to recognize and protect the varied original development patterns in the neighborhood.

### **GOAL TWO**

#### **PRESERVE THE HISTORIC CHARACTER AND RESOURCES OF THE CACNPA NEIGHBORHOODS**

**Objective 2.1:** Protect historic resources including buildings, bridges, gateways and other structures.

**Staff analysis:** Even though the property located to the south is zoned MF-3-NCCD-NP and there are multifamily zoning and land uses in the Central Austin Combined Planning Area and within the immediate North University area, the plan does not support the conversion of more single family and duplex residences into multifamily structures, especially older homes that help to contribute to the historic character of the neighborhood.

**BACKGROUND:** The plan amendment was filed in-cycle on February 26, 2010, which is the open period for plan amendment applications for property located within approved neighborhood plans on the west side of IH-35.

The plan amendment case number NPA-2010-0019.01 expired on August 26, 2010, due to staff error. Therefore, staff reapplied on behalf of the applicant which created the new case number NPA-2010-0019.02.

The property owner requests a change in the future land use map from Single Family to Multifamily. The zoning request is from SF-3-NCCD-NP to MF-1-CO-NCCD-NP with a conditional overlay to limit the number of dwelling units to a maximum of three units. The site currently has three residential units, but the zoning allows only a maximum of two units. Therefore, the applicant requests the zoning change in order to make the three residential units conforming under the MF-1-CO-NCCD-NP.

The applicant's agent said the property was "Red-tagged" by the Code Enforcement Division for having an illegal third unit, although the agent claims the City issued permits and a Certificate of Occupancy for the addition of third dwelling unit.

The Central Austin Combined Neighborhood Plan was completed under the City of Austin's Neighborhood Planning Program and was adopted as part of the Austin Tomorrow Comprehensive Plan on August 24, 2004. The Central Austin Combined Neighborhood Planning Area is located in the central part of Austin's Urban Core. It is composed of the Hancock, North University, and West University Neighborhood Planning Areas. The general boundaries of the planning area are: 38<sup>th</sup> Street, Duval, and 45<sup>th</sup> Street to the north; IH-35 to the east; Martin Luther King, Jr. Boulevard, Guadalupe Avenue, 27<sup>th</sup> Street and Dean Keeton to the south; and Lamar Boulevard to the west.

**PUBLIC MEETINGS:** Fifteen people attended the neighborhood plan amendment meeting that was held on April 27, 2010, including the agent and the plan amendment planner.

Vince Huebinger, the owners' agent, stated that the owners acquired the property six or seven years ago as part of a legal settlement. Since the property has three residential units, the owners would like to maintain the "status quo" by rezoning the property to MF-1-CO-NCCD-NP to allow for the three existing units and to improve the parking area. The owners plan to maintain residential character of the building and have no plans to demolish the building.

In Mr. Huebinger's presentation, he pointed out that the property located to the south is zoned MF-3-NP and the property to the north has three dwelling units even though it is zoned SF-3-NP. He further stated that subject property is located on 38<sup>th</sup> Street, a high traffic corridor, where he believes multifamily uses can be accommodated. He also noted that the property is near Speedway Avenue, which is a commercial corridor.

The following questions were asked by the attendees:

- Why don't the owners just convert the house back to two units in order to be in compliance with the SF-3-NP zoning?
  - Answer: It would cost too much money to convert the structure back to a duplex.
- Have the owners considered seeking Historic Designation on the property, which would mean the owners could not demolish the building?

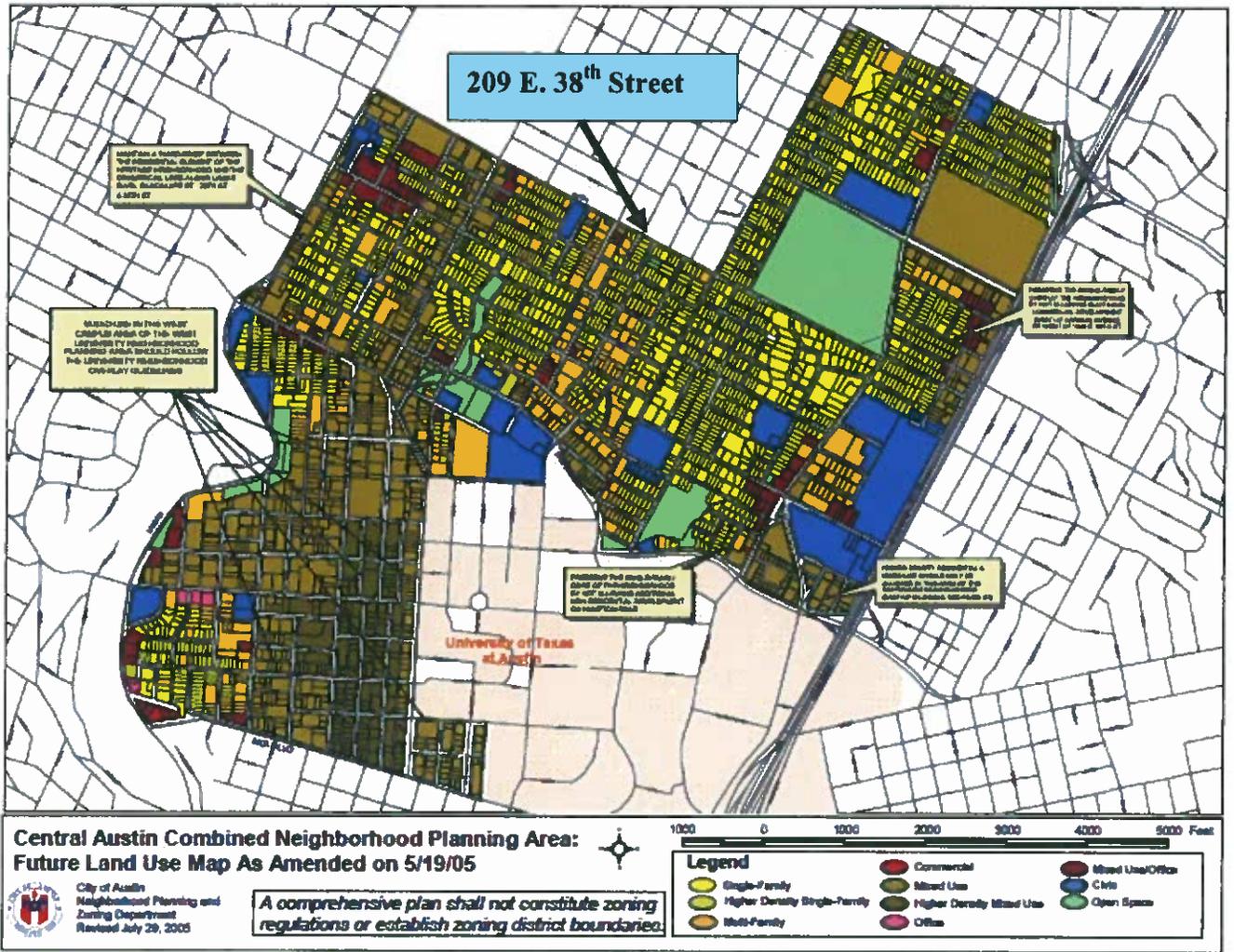
- Answer: No, but we will look into it.  
(Note: Mr. Huebinger did research the possibility of a historic designation with Steve Sadowsky, the Historic Preservation Officer, but was not encouraged to apply given the lack of architectural significance of the structure.)

After the discussion, the attendees voted to not support the plan amendment and zoning change request. The CANPAC Planning Contact Team and the Hyde Park Planning Contact Team submitted letters in opposition, which are provided with this report.

**CITY COUNCIL DATE:** October 28, 2010      **ACTION:** Pending

**CASE MANAGER:** Maureen Meredith, Senior Planner, 974-2695

**EMAIL:**      maureen.meredith@ci.austin.tx.us







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PAGE 02/02

Letter of Support

Dr. and Mrs. John P. Schneider  
2500 Barton Creek Blvd., #2216  
Austin, Texas 78735

May 5, 2010

City of Austin  
Planning Commission

To Whom It May Concern:

As the owner of 3705 Speedway (TCAD #02180404120000) I support the request for changing the zoning of 209 E. 38<sup>th</sup> St., Case #MPA 20010-00191A (C4142010-0024), to MF1.

Yours truly,



John P. Schneider, M.D.  
Manager  
La Familia Partnership

**Letter from the CANPAC Planning Contact Team**

From: Mary Ingle  
Sent: Thursday, April 29, 2010 1:50 PM  
To: Meredith, Maureen  
Cc: canpac@yahoogleroups.com  
Subject: CANPAC's Opposition to NPA 2010-0019.01 and C14-2010-0024 (209 East 38th Street)

Dear Maureen,

On behalf of CANPAC, we want to thank you for sponsoring the meeting on Tuesday evening, 4/27/10, with the agent/applicant for 209 E 38th Street, (cases # NPA 2010-0019.01, C14-2010-0024). As you and the agent learned at the end of this meeting, CANPAC's unanimous position is to oppose the zoning change from SF-3-NCCD-NP to MF-1-CO-NCCD-NP (CO for max 3 units) for 209 East 38th Street. At the very minimum, the square footage requirements for MF 1 (8,000 square feet) have not been met.

We oppose this zoning change because of the many reasons specified in the communications from the North University Neighborhood Association and the Hyde Park Neighborhood Association. However, our overarching concern is that our entire planning area has dozens and probably hundreds of other properties for which similar claims could be made based on patterns of use, however illegal they may have been over time. We have seen the city mistakenly grant permits for projects that are not allowed by zoning or other city code provisions. We have seen exceptions made for one property establish precedents that multiplied into de facto zoning changes over an entire area. We will continue to oppose any change to the Neighborhood Plan or the zoning category affecting this property. Within our CANPAC Contact Team there are architects and other experts who can imagine enhancements to the 209 East 38th Street property that would make it an asset both to its owners and to the neighborhood, all within its current zoning, SF 3-NCCD-NP.

Respectfully yours,

Mary Ingle, Co-Chair of CANPAC

and

Al Godfrey, Co-Chair of CANPAC

**Letter from Hyde Park Neighborhood Contact Team**

April 27, 2010

To: Maureen Meredith, Neighborhood Planner, City of Austin

Cc: Scott Morris, Chairman, NUNA Planning Team  
Mary Ingle, Coordinator, Canpac

From: Karen McGraw, Chairman, Hyde Park Neighborhood Contact Team

Re: Zoning Case # C14-2010-0024 – Plan Amendment Case # NPA-2010-0019.01

Location: **209 E. 38<sup>th</sup> St.**

The Hyde Park Neighborhood Contact Team, a notified stakeholder, voted 9-0 at its meeting on April 26, 2010, to oppose this neighborhood plan change and zoning change.

The change from SF3 to MF1 on E. 38<sup>th</sup> will negatively affect the homes in our neighborhood directly across 38<sup>th</sup> St. that are all zoned SF3. Much of our North side of 38th is included in the existing Shadow Lawn National Historic Register District and in the proposed local Hyde Park Historic District that has been filed for City adoption.

We further request that the property in question be brought into compliance with current zoning if the use was not established legally. Rewarding illegal development with new zoning sets a precedent for the city to foster illegal development on other sites.

We are also concerned regarding recent efforts to locate cellular equipment on this lot and on an adjacent Austin Energy tower. We are concerned that a change to MF zoning will further enable this effort. The City of Austin Land Development code does not allow cell installations with their attendant diesel generators and fuel tanks within 200' of single-family residences and 300' of historic property.

The following is additional information on the Federal 106 requirements for placing a cellular installation at this location:

Being within 250 feet of the Shadow Lawn National Register District, collocation of a cell array will require a review Section 106 review by the FCC, Subpart B of 36 CFR Part 800, pursuant to the Federal Communication Commission's Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, executed between the FCC and the National Conference of State Historic Preservation Officers and Advisory Council on Historic Preservation, Section V, 2. (<http://wireless.fcc.gov/releases/da010691a.pdf>).

Applicable sections of the Nationwide Programmatic Agreement are excerpted, as follows.

**“V. COLLOCATION OF ANTENNAS ON BUILDINGS AND NON-TOWER STRUCTURES OUTSIDE OF HISTORIC DISTRICTS**

**A. An antenna may be mounted on a building or non-tower structure without such collocation being reviewed under the consultation process set forth under Subpart B of 36 CFR Part 800, unless: ...**

**2. The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of the historic district, the building or structure is within 250 feet of the boundary of the historic district;”**

The proposed collocation on the very large Austin Energy tower is extremely harmful to the historic character of the Shadow Lawn National Historic Register District in that it places a large highly visible piece of 21st century technology adjacent to the historic district.

To date the neither the City of Austin, Austin Energy, Verizon nor the property owner have begun or completed a Section 106 Review by the FCC to our knowledge.

The contact person at the Texas Historical Commission for 106 reviews of collocations is Linda Henderson (phone: 463-5851).

**NORTH UNIVERSITY NEIGHBORHOOD ASSOCIATION**



September 20, 2010

**NUNA'S OPPOSITION TO PLAN AMENDMENT  
209 EAST 38<sup>TH</sup> STREET**

To: Members of the Planning Commission

Re: Plan Amendment Request for 209 East 38<sup>th</sup> Street  
File No. NPA-2010-0019.01  
Related Zoning Case No. C14-2010-0024

This is an attempt to put new clothes on an egregious spot zoning request that NUNA disapproved nearly a year and a half ago. On April 20, 2009, NUNA held one of the most strongly attended meetings in its recent history and overwhelmingly rejected essentially the same proposed plan amendment because of its multiple inconsistencies with the Central Austin Combined Neighborhood Plan. Later in 2009 we filed a comprehensive report with the City detailing those inconsistencies. We adopt that report as our further response to this application and request that the City staff bring it forward and make it a part of the current file.

NUNA's position has prevailed before every board or commission the applicant has ever gone to. There is nothing new about the underlying facts that would call for any different result this time. NUNA respectfully requests that the applicant's request for plan amendment be denied.

Very truly yours

A handwritten signature in black ink, appearing to read "L. Miller", is written over a horizontal line.

Laurence Miller, President  
North University Neighborhood Association

Cc:

Maureen Meredith

**PUBLIC HEARING INFORMATION**

The proposed amendment will be reviewed and acted upon at two public hearings: first, before the Planning Commission and then before the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed amendment. You may also contact a registered neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a plan amendment request, or approve an alternative to the amendment requested.

If you have any questions concerning this notice, please contact the City of Austin Planning and Development Review Department at the number shown on the first page. If you would like to express your support or opposition to this request, you may do so in several ways:

- by attending the Public Hearing and conveying your concerns at that meeting
- by submitting the Public Hearing Comment Form
- by writing to the city contact listed on the previous page

For additional information on Neighborhood Plans, visit the website: [www.ci.austin.tx.us/zoning/](http://www.ci.austin.tx.us/zoning/).

**PUBLIC HEARING COMMENT FORM**

If you use this form to comment, it may be submitted to:  
City of Austin  
Planning and Development Review Department  
MAUREEN MEREDITH  
P. O. Box 1088  
Austin, TX 78767-8810

If you do not use this form to submit your comments, you must include the name of the body conducting the public hearing, its scheduled date, the Case Number and the contact person listed on the notice in your submission.

Case Number: NPA-2010-0019.01  
Contact: Maureen Meredith  
Public Hearings:  
Planning Commission - Sept. 28, 2010  
City Council - Oct. 28, 2010

<input type="checkbox"/> I am in favor <input checked="" type="checkbox"/> I object
--

Douglas Plummer  
Your Name (please print)

301 E. 35<sup>th</sup> Street 78705

Your address(es) affected by this application

DMR  
Signature

9-16-2010  
Date

Comments: This owner has repeatedly tried to break our neighborhood plan and construct a single residence home into an apartment complex despite being surrounded by homes and despite having repeatedly rejected by the neighborhood and the City Planning Dept. Please reject this application yet again.

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Case Number: NPA-2010-0019-01

Contact: Maureen Meredith

Public Hearings:

Planning Commission - Sept. 28, 2010

City Council - Oct. 28, 2010

I am in favor  
 I object

Pamela Bell (formerly Morris)  
Your Name (please print)

3500 Speedway  
Your address(es) affected by this application

Pamela Bell  
Signature

9/26/2010  
Date

Comments:

I oppose the rezoning of 209 E. 38th  
Developers and owners should follow procedures  
to obtain approval for project's PRIOR to  
rezoning and conditional. I did. Also  
this property is not large enough to support MF  
zoning, and such designation would change the  
nature of the block. The neighbor hood opposes  
the rezoning as well (NUNYA). Developers should not be  
allowed to change needs to make the rezoning actions













